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November 5, 2008

VIA ELECTRONIC FILING and FEDEX

Hon. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Re: STB Finance Docket No. 35164  
BNSF Railway Company – Petition for Declaratory Order

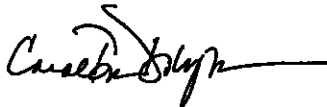
Dear Secretary Quinlan:

Attached for filing in the above-referenced case are the Comments of Oklahomans for New Transportation Alternatives Coalition (ONTRAC).

Service upon the parties has been made as noted in the Certificate of Service.

If you have any questions concerning the Comments, please let me know.

Respectfully,



Carol Price Dillingham

Att.

Cc: Kristy D Clark, Esq.  
Mr. Edwin Kessler

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35164**

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**PETITION OF BNSF FOR DECLARATORY ORDER**

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**COMMENTS  
OF  
OKLAHOMANS FOR NEW TRANSPORTATION ALTERNATIVES COALITION  
(ONTRAC)**

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OBA #11078  
Attorney for ONTRAC

Dated November 5, 2008

**STB FINANCE DOCKET NO. 35164**

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**BNSF RAILWAY COMPANY - PETITION FOR DECLARATORY ORDER**

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**COMMENTS  
OF  
OKLAHOMANS FOR NEW TRANSPORTATION ALTERNATIVES COALITION  
(ONTRAC)**

Notice is hereby given that Oklahomans for New Transportation Alternatives Coalition ("ONTRAC") intends to participate as a party of record in this proceeding. Please direct all matters pertaining to this proceeding to ONTRAC counsel of record: Carol Price Dillingham, Attorney at Law, 1711 S. Pickard Avenue, Norman, OK 73072

**COMMENTS AND AUTHORITIES**

1 By its Decision (STB Docket No. 35164) served October 2, 2008, the Board invited public comments from interested parties in response to filings by BNSF Railway Company ("BNSF") of its petition to relocate a portion of railroad line. Accordingly, ONTRAC submits the following comments and authorities

2. As a not-for-profit public interest organization representing more than 1000 members throughout Oklahoma whose mission seeks to ensure the future of intermodal rail transportation opportunities, both passenger and freight, for the citizens of Oklahoma, ONTRAC is clearly an interested party to these proceedings.

· 3. ONTRAC has sponsored and secured formal resolutions supporting rail transit in Oklahoma from the following Oklahoma municipalities Norman (3<sup>rd</sup> largest city), Shawnee, El Reno, Chickasha and Lawton (4<sup>th</sup> largest city), and from the following organizations: Oklahoma Democratic Party and Oklahoma Chapter of the Sierra Club. All of the resolutions declare that the rail assets to, from and at Oklahoma City Union Station, located near MP 540.5 on the Chickasha Line, which line is the subject of this proceeding, are necessary and critical for current and future rail service. A copy of those resolutions are attached hereto and made a part hereof

4. On June 5, 2008 the board issued its first decision arising from these facts. In this ruling, (BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK (STB Docket No AB-6 (Sub-No 430X)), BNSF failed to succeed because the Board rejected BNSF's two-year out-of-service class exemption notice for being false and misleading.

5. After having its initial theory rejected, BNSF now contends that its filing of the notice of abandonment related to the earlier abandonment exemption proceeding was an error on its part and that what BNSF is actually doing in regards to the 1.54-mile segment of its Chickasha Subdivision between Milepost 540.15 and Milepost 541.69, referred to as the Middle Segment, is simply relocating its railroad line and that such relocation does not require Board approval. Relocation has been determined to be the destruction of an old line and the new construction of a replacement line. See, Sacramento Regional Transit District -- Petition for Declaratory Order Regarding Carrier Status, STB Finance Docket No 33796, (citing 49 U.S.C. 10901); City of Detroit vs. Canadian National Ry., et al., 91 C.C.2d 1208 (1993), *aff'd sub nom Detroit/Wayne County Port Authority vs. ICC*, 49 F.3d 1314 (D.C. Cir. 1995); Missouri Pac. R. Co. Trustee Construction, 282 I.C.C. 388 (1952)

6. In those prior relocation proceedings, both the Board and the Interstate Commerce Commission (ICC) have ruled that abandonment authorization was not required when a new railroad line was constructed to replace an existing railroad line being abandoned and not when traffic is simply rerouted from a railroad line being abandoned to another existing railroad line. *Id.*

7. Clearly then, BNSF's proposal is not a relocation of the subject railroad line, but rather the rerouting of traffic from one BNSF line to another. The traffic which currently moves over the Middle Segment of the Chickasha Subdivision would simply be diverted by BNSF to its existing, unabandoned Packingtown Lead line.

8. Neither BNSF, the entity providing rail service, nor the Oklahoma Department of Transportation, the entity seeking the right-of-way of the Middle Segment, has constructed a new railroad line to replace the railroad line being abandoned. Instead, BNSF is simply rerouting the traffic previously carried over its Chickasha Subdivision to its Packingtown Lead, which is an existing, unabandoned railroad line.

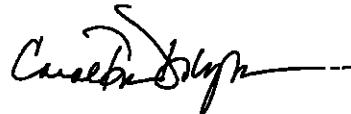
9. Allowing BNSF to abandon a railroad line without Board authority by simply diverting the traffic that was previously handled by that line to another of the railroad's existing lines undermines the integrity of the Board's abandonment process and takes away the rights normally afforded to those affected by such abandonment to participate in the public abandonment process.

### CONCLUSION

In its first filings, BNSF attempted to avoid the public process with false and misleading documents. At present, it seeks to render meaningless the clear provisions of the abandonment process over which this Board has jurisdiction. One of the most basic tenets of statutory or regulatory construction requires that all words of any law or regulation have meaning. Only through strict adherence to the abandonment regulations and process will the applicable rules retain their intended meaning.

Therefore, ONTRAC respectfully requests the Board to find that BNSF Railway Company's proposed diversion of traffic from the Middle Segment to the Packingtown Lead is not a line relocation, but an effort to cause an abandonment without the Board's authorization and enter its decision requiring BNSF to participate in the full abandonment process..

Respectfully submitted,  
ONTRAC  
By its attorney,

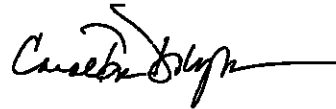
A handwritten signature in black ink, appearing to read "Carol Price Dillingham", followed by a horizontal line.

Carol Price Dillingham  
OBA #11078

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of November, 2008, a copy of the foregoing Comments of Oklahomans for New Transportation Alternatives Coalition (ONTRAC) was mailed by first class mail, postage prepaid, to Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131-2828, and to Edward Kessler, 1510 Rosemont Drive, Norman, OK 73072.

A handwritten signature in black ink, appearing to read "Carol Price Dillingham", written over a horizontal line.

Carol Price Dillingham